

HOUSE BILL 2583

By Curtiss

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 6, relative to workers' compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-102(10), is amended by adding the following as new, appropriately designated subdivisions:

(E) "Employee" includes all persons subject to § 50-6-113 who are being paid by a construction contractor as a subcontractor, unless the subcontractor has otherwise secured the payment of compensation coverage as a subcontractor, consistent with § 50-6-113, for work performed by or as a subcontractor;

(F) "Employee" includes an independent contractor working or performing services in the construction industry subject to § 50-6-113;

SECTION 2. Tennessee Code Annotated, Section 50-6-102 is amended by adding the following as new, appropriately designated subdivisions:

(___) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation filed with the secretary of state or as permitted or required by title 48. As to persons engaged in the construction industry, the term "officer of a corporation" includes a member owning at least ten percent (10%) of a limited liability company created and approved under title 48, chapters 201–248 and 249;

(___) "Partner" means any person who is a member of a partnership that is formed by two (2) or more persons to carry on as co-owners of a business with the understanding that there will be a proportional sharing of the profits and losses between them, or any partnership formed under the Revised Uniform Partnership Act in title 61,

chapter 1. For the purposes of this chapter, a partner is a person who participates fully in the management of the partnership and who is personally liable for its debts;

(21) "Sole proprietor" means a natural person who owns a form of business in which that person owns all the assets of the business and is solely liable for all the debts of the business;

SECTION 3. Tennessee Code Annotated, Section 50-6-104 is amended by adding the following language at the end of subsection (c):

The notice of election to be exempt from this chapter must contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive the department or any employer or employee, insurance company, or any other person, files a notice of election to be exempt containing any false or misleading information is guilty of a Class D felony." Each person filing a notice of election to be exempt shall personally sign the notice and attest that such person has reviewed, understands, and acknowledges the foregoing notice.

SECTION 4. Tennessee Code Annotated, Section 50-6-104 is amended by adding the following as new appropriately, designated subsections:

(d) As to officers of a corporation who are engaged in the construction industry as defined pursuant to § 50-6-113, no more than three (3) officers of a corporation or of any group of affiliated corporations may elect to be exempt from this chapter by filing written notice of the election with the department of labor and workforce development. Officers must be shareholders, each owning at least ten percent (10%) of the stock of such corporation and listed as an officer of such corporation with the secretary of state, in order to elect exemptions under this chapter. For purposes of this subsection (d), the term "affiliated" means and includes one or more corporations or entities, any one of which is a corporation engaged in the construction industry, under the same or

substantially the same control of a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term “affiliated” includes, but is not limited to, the officers, directors, executives, shareholders active in management, employees, and agents of the affiliated corporation. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business is affiliated with the other.

(e)

(1) Each officer of a corporation who is engaged in the construction industry pursuant to § 50-6-113, and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption, must mail a written notice to such effect to the department on a form prescribed by the department. The notice of election to be exempt from the provisions of this chapter must be notarized and under oath.

(2) The notice of election to be exempt which is submitted to the department by the officer of a corporation who is allowed to claim an exemption as provided by this chapter must list the name, federal tax identification number, social security number, all certified or registered licenses issued pursuant to title 62 held by the person seeking the exemption, a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the department, a copy of the relevant occupational license in the primary jurisdiction of the business, and the registration number of the corporation filed with the secretary of state along with a copy of the stock certificate evidencing the required ownership under this chapter.

(3) The notice of election to be exempt must identify each corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, and must certify that any employees of the corporation whose officer elects an exemption are covered by workers' compensation insurance.

(4) Upon receipt of the notice of the election to be exempt, receipt of all application fees and a determination by the department that the notice meets the requirements of this subsection (d), the department shall issue a certification of the election to the officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid.

(5) The certificate of election must list the name of the corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new or different corporation that is not listed on the certificate of election. A copy of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. Upon filing a notice of revocation of election, an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department, the

department shall notify the workers' compensation carriers identified in the request for exemption.

(f) A notice given under subsections (d) and (e), shall become effective when issued by the department or thirty (30) days after an application for an exemption is received by the department, whichever occurs first. However, if an accident or occupational disease occurs less than thirty (30) days after the effective date of the insurance policy under which the payment of compensation is secured or the date the employer qualified as a self-insurer, such notice is effective as of 12:01 a.m. of the day following the date it is received by the department in Nashville.

(g) A construction industry certificate of election to be exempt which is issued in accordance with this section shall be valid for two (2) years after the effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the department. The construction industry certificate must expire at midnight, two (2) years from its issue date, as noted on the face of the exemption certificate. A construction industry certificate of election to be exempt may be revoked before its expiration by the officer for whom it was issued or by the department for the reasons stated in this section. At least sixty (60) days prior to the expiration date of a construction industry certificate of exemption issued after July 1, 2010, the department shall send notice of the expiration date and an application for renewal to the certificate holder at the address on the certificate.

(h) Any contractor responsible for compensation under § 50-6-113 may register in writing with the workers' compensation carrier for any subcontractor and shall thereafter be entitled to receive written notice from the carrier of any cancellation or nonrenewal of the policy.

(i) The department shall assess a fee of fifty dollars (\$50.00) with each request for a construction industry certificate of election to be exempt or renewal of election to be exempt under this section.

(j) The department may prescribe by rule forms and procedures for issuing or renewing a construction industry certificate of election to be exempt.

SECTION 5. This act shall take effect on July 1, 2010, the public welfare requiring it.